



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8, MONTANA OFFICE**

FEDERAL BUILDING, 10 West 15th Street, Suite 3200

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MAY 02 2016

Ref: 8MO

Martha S. Chieply, Regulatory Branch Chief
U.S. Army Corps of Engineers
Helena Regulatory Office
10 West 15th Street, Suite 2200
Helena, Montana 59626

Re: CWA § 401 Water Quality Certification for Regional General Permit, Repair and Protection Activities in Emergency Situations, Indian Country Waters in Montana (MT-RGP-14-01)

-GRANT WITH CONDITIONS-

Dear Ms. Chieply:

The U.S. Environmental Protection Agency Region 8 has responsibility under Section 401 of the Clean Water Act (CWA) to evaluate and certify water quality protections for federal permits or licenses issued for work on most tribal lands within Montana. As such, the EPA has reviewed the U.S. Army Corps of Engineers (USACE) March 15, 2015 Public Notice announcing the issuance of Regional General Permit (RGP) MT-RGP-14-01 in Montana under CWA Section 404. The purpose of the RGP is to provide immediate permitting for emergency related activities to protect people and property. The EPA has considered CWA Section 304(a) criteria and tribal concerns in reviewing the potential impacts of the proposed permit and is granting CWA Section 401 certification for the above referenced permit with the enclosed conditions.

The RGP will authorize activities in an emergency situation including, but not limited to: levee construction, rebuilding or maintenance; removal of accumulated sediment, debris or vegetation to prevent or mitigate the emergency situation; bank stabilization to prevent or minimize erosion or the loss of structures such as bridges; debris containment structures; and construction of diversion channels and flow detention structures.

This authorization does not relieve applicants or contractors of any liability for damages to aquatic life, habitat, or other beneficial uses that may result from permitted projects. It does not exempt applicants or contractors from any other federal, state, tribal, or local laws or regulations, nor does it provide exemption from legal action by private citizens or governments for damage to property that the activities permitted under this general permit may cause. This letter and certification should be provided to applicants for this USACE RGP as documentation of EPA certification for permitted projects within the exterior boundaries of the Crow, Fort Belknap, and Rocky Boy's Reservations in Montana.

If you have questions regarding this certification, please contact Peter Brumm on my staff at (406) 457-5029 or brumm.peter@epa.gov.

Sincerely,



Debra H. Thomas
Acting Director

Enclosure: Clean Water Act Section 401 Water Quality Certification Conditions

cc: [via electronic mail]

Connie Howe, Environmental Director
Crow Tribe (Crow Reservation)

Ina Nez Perce, Environmental Directory
Gros Ventre & Assiniboine Tribes (Fort Belknap Reservation)

Dustin White, Water Resources Director
Chippewa Cree Tribe (Rocky Boy's Reservation)

Todd Tillinger, P.E., Montana Programs Manager
U.S. Army Corps of Engineers, Montana Regulatory Office

Robert Cole, Acting Montana Programs Manager
U.S. Army Corps of Engineers, Montana Regulatory Office

Clean Water Act (CWA) Section 401 Certification Conditions

CWA § 401 Water Quality Certification for Regional General Permit (MT-RGP-14-01), Repair and Protection Activities in Emergency Situations for Waters of the United States (WOUS) within the exterior boundaries of the Crow, Fort Belknap, and Rocky Boy's Reservations is granted with the following conditions:

1) The project applicant or contractor must notify the EPA and appropriate tribal environmental staff as soon as possible after an emergency action is taken. Copies of all information and application material submitted to the USACE should also be submitted to the following EPA and appropriate tribal contacts:

Peter Brumm, Hydrologist
Environmental Protection Agency Region 8
10 West 15th Street, Suite 3200
Helena, MT 59262
(406) 457-5029
brumm.peter@epa.gov

Connie Howe, Environmental Director
Crow Tribe (Crow Reservation)
P.O. Box 159
Crow Agency, MT 59022-0400
(406) 426-0397
connie.howe@crow-nsn.gov

Ina Nez Perce, Environmental Director
Gros Ventre & Assiniboine Tribes (Fort Belknap Reservation)
656 Agency Main Street
Harlem, MT 59626-9455
(406) 353-8429
inperce@ftbelknap.org

Dustin White, Water Resources Director
Chippewa Cree Tribe (Rocky Boy's Reservation)
P.O. Box 544 Rocky Boy Route
Box Elder, MT 59521
(406) 395-4225
twrd.dustinwhite@gmail.com

2) A copy of this CWA Section 401 Certification must be kept on-site at all times.

3) This certification does not authorize any unconfined discharge of liquid cement in WOUS. Clean materials must be used for all construction and fill activities.

- 4) Locate fueling, lubrication, maintenance, storage and staging of vehicle and equipment activities away from surface waters and stormwater inlets or conveyances. Provide secondary containment (e.g., spill berms, decks, spill containment pallets) where appropriate and have spill kits readily available.
- 5) This certification does not authorize the introduction of nonnative and/or species with invasive characteristics.
- 6) All existing water uses will be fully maintained and protected to the maximum extent possible. This certification does not authorize significant, permanent adverse impacts to WOUS and mitigation for impacts may be required for permanent losses of WOUS. Water diversions must not result in loss of beneficial uses or exceedance of water quality criteria. Normal flows must be restored as soon as possible.
- 7) All construction, dredge and excavation material, debris and temporary fill must be removed from WOUS as soon as possible and properly disposed of on land so it cannot enter a waterway or cause water quality degradation after the emergency.
- 8) All necessary best management practices to control erosion and minimize impacts shall be utilized. Restoration of the impacted sites including regrading, reseeding and revegetation shall occur as soon as possible.
- 9) Any additional work done on the site or permanent fill permitted by future permits shall be reported to the EPA and appropriate tribal environmental contact and referenced as work initially permitted under this emergency RGP.
- 10) The applicant or contractor must allow representatives from the EPA and Tribe(s) to inspect the authorized activity at any time deemed necessary to ensure that it is being, or has been, accomplished in accordance with the terms and conditions of all applicable permits.
- 11) No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.
- 12) Georeferenced photographs shall be taken immediately after the emergency action project site is secured, and after revegetation and restoration of the site is completed. Representative photographs and a summary of the permitted action shall be submitted to the EPA Montana Office and appropriate tribal environmental contact immediately after the project site is secured and after restoration is completed. Submittals to the EPA may be sent electronically or mailed to:

U.S. Environmental Protection Agency
10 West 15th Street, Suite 3200
Helena, MT 59262-0096
Attention: CWA 401 Certification Monitoring, MT-RGP-14-01